

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN SENATE MAY 28, 2013

SENATE BILL

No. 569

Introduced by Senator Lieu

February 22, 2013

An act to add Section 859.5 to the Penal Code, and to add Section 626.8 to the Welfare and Institutions Code, relating to interrogation.

LEGISLATIVE COUNSEL'S DIGEST

SB 569, as amended, Lieu. Interrogation: electronic recordation.

Existing law provides that under specified conditions the statements of witnesses, victims, or perpetrators of specified crimes may be recorded and preserved by means of videotape.

This bill would require the electronic recordation of the entire custodial interrogation of a minor who is in a fixed place of detention, as defined, and who, at the time of the interrogation, is suspected of committing or accused of committing ~~a specified offense~~. *murder*. The bill would set forth various exceptions from this requirement, including if the law enforcement officer conducting the interrogation or his or her superior reasonably believes that electronic recording would disclose the identity of a confidential informant or jeopardize the safety of an officer, the individual being interrogated, or another individual. The bill would require the prosecution to show by clear and convincing evidence that an exception applies to justify the failure to make that electronic recording. The bill would also require the interrogating entity to maintain the original or an exact copy of an electronic recording made of the interrogation until the final conclusion of the proceedings, as specified.

The bill would require the ~~Judicial Council to develop related jury instructions~~. *court to provide jury instructions to be developed by the Judicial Council if the court finds that a defendant was subjected to a custodial interrogation in violation of the above-mentioned provisions.* The bill would make these provisions applicable to juvenile court proceedings, as specified. By imposing these new requirements on local law enforcement, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares the
- 2 following:
- 3 (1) According to a national study, false confessions extracted
- 4 during police questioning of suspects have been identified as the
- 5 second most frequent cause of a wrongful conviction. Although
- 6 threats and coercion sometimes lead innocent people to confess,
- 7 even the most standardized interrogations can result in a false
- 8 confession or admission. Mentally ill or mentally disabled persons
- 9 are particularly vulnerable, and some confess to crimes because
- 10 they want to please authority figures or to protect another person.
- 11 Additionally, innocent people may come to believe that they will
- 12 receive a harsher sentence, or even the death penalty, unless they
- 13 confess to the alleged crime.
- 14 (2) Three injustices result from false confessions. First, a false
- 15 confession can result in an innocent person being incarcerated.
- 16 Second, when an innocent person is incarcerated, the criminal
- 17 investigations end and the real perpetrator remains free to commit
- 18 similar or potentially worse crimes. Third, victims' families are
- 19 subjected to double the trauma: the loss of, or injury occurring to,
- 20 a loved one and the guilt over the conviction of an innocent person.
- 21 Mandating electronic recording of custodial interrogations of both

1 adults and juveniles will improve criminal investigation techniques,
2 reduce the likelihood of wrongful convictions, and further the
3 cause of justice in California.

4 (3) Evidence of a defendant's alleged statement or confession
5 is one of the most significant pieces of evidence in any criminal
6 trial. Although confessions and admissions are the most accurate
7 evidence used to solve countless crimes, they can also lead to
8 wrongful convictions. When there is a complete recording of the
9 entire interrogation that produced such a statement or confession,
10 the factfinder can evaluate its precise contents and any alleged
11 coercive influences that may have produced it.

12 (b) For these reasons, it is the intent of the Legislature to require
13 electronic recording of custodial interrogations of juveniles.
14 Recording interrogations decreases wrongful convictions based
15 on false confessions and enhances public confidence in the criminal
16 process. Properly recorded interrogations provide the best evidence
17 of the communications that occurred during an interrogation,
18 prevent disputes about how an officer conducted himself or herself
19 or treated a suspect during the course of an interrogation, prevent
20 a defendant from lying about the account of events he or she
21 originally provided to law enforcement, and spare judges and jurors
22 the time necessary and the need to assess which account of an
23 interrogation to believe.

24 SEC. 2. Section 859.5 is added to the Penal Code, to read:

25 859.5. (a) Except as otherwise provided in this section, a
26 custodial interrogation of a minor, who is in a fixed place of
27 detention, and suspected of committing ~~the offense~~ *murder, as*
28 listed in paragraph (1) of subdivision (b) of Section 707 of the
29 Welfare and Institutions Code, shall be electronically recorded in
30 its entirety. A statement that is electronically recorded as required
31 pursuant to this section creates a rebuttable presumption that the
32 electronically recorded statement was, in fact, given and was
33 accurately recorded by the prosecution's witnesses, provided that
34 the electronic recording was made of the custodial interrogation
35 in its entirety and the statement is otherwise admissible.

36 (b) The requirement for the electronic recordation of a custodial
37 interrogation pursuant to this section shall not apply under any of
38 the following circumstances:

1 (1) Electronic recording is not feasible because of exigent
2 circumstances. The exigent circumstances shall be recorded in the
3 police report.

4 (2) The person to be interrogated states that he or she will speak
5 to a law enforcement officer only if the interrogation is not
6 electronically recorded. If feasible, that statement shall be
7 electronically recorded. The requirement also does not apply if the
8 person being interrogated indicates during interrogation that he or
9 she will not participate in further interrogation unless electronic
10 recording ceases. If the person being interrogated refuses to record
11 any statement, the officer shall document that refusal in writing.

12 (3) The custodial interrogation took place in another jurisdiction
13 and was conducted by law enforcement officers of that jurisdiction
14 in compliance with the law of that jurisdiction, unless the
15 interrogation was conducted with intent to avoid the requirements
16 of this section.

17 (4) The interrogation occurs when no law enforcement officer
18 conducting the interrogation has knowledge of facts and
19 circumstances that would lead an officer to reasonably believe that
20 the individual being interrogated may have committed the offense
21 ~~listed in paragraph (1) of subdivision (b) of Section 707 of the~~
22 ~~Welfare and Institutions Code~~ *murder* for which this section
23 requires that a custodial interrogation be recorded. If during a
24 custodial interrogation, the individual reveals facts and
25 circumstances giving a law enforcement officer conducting the
26 interrogation reason to believe that ~~the offense listed in paragraph~~
27 ~~(1) of subdivision (b) of Section 707 of the Welfare and Institutions~~
28 ~~Code~~ *murder* has been committed, continued custodial interrogation
29 concerning that offense shall be electronically recorded pursuant
30 to this section.

31 (5) A law enforcement officer conducting the interrogation or
32 the officer's superior reasonably believes that electronic recording
33 would disclose the identity of a confidential informant or jeopardize
34 the safety of an officer, the individual being interrogated, or another
35 individual. An explanation of the circumstances shall be recorded
36 in the police report.

37 (6) The failure to create an electronic recording of the entire
38 custodial interrogation was the result of a malfunction of the
39 recording device, despite reasonable maintenance of the equipment,
40 and timely repair or replacement was not feasible.

1 (7) The questions presented to a person by law enforcement
2 personnel and the person's responsive statements were part of a
3 routine processing or booking of that person. Electronic recording
4 is not required for spontaneous statements made in response to
5 questions asked during the routine processing of the arrest of the
6 person.

7 (c) If the prosecution relies on an exception in subdivision (b)
8 to justify a failure to make an electronic recording of a custodial
9 interrogation, the prosecution shall show by clear and convincing
10 evidence that the exception applies.

11 (d) ~~The presumption of inadmissibility of statements provided~~
12 ~~in this section may be overcome, and a~~ A person's statements that
13 were not electronically recorded *pursuant to this section* may be
14 admitted into evidence in a criminal proceeding or in a juvenile
15 court proceeding, as applicable, if the court finds that all of the
16 following apply:

17 (1) The statements are admissible under applicable rules of
18 evidence.

19 (2) The prosecution has proven by clear and convincing evidence
20 that the statements were made voluntarily.

21 (3) Law enforcement personnel made a contemporaneous audio
22 or audio and visual recording of the reason for not making an
23 electronic recording of the statements. This provision does not
24 apply if it was not feasible for law enforcement personnel to make
25 that recording.

26 (4) The prosecution has proven by clear and convincing evidence
27 that one or more of the circumstances described in subdivision (b)
28 existed at the time of the custodial interrogation.

29 (e) Unless the court finds that an exception in subdivision (b)
30 applies, all of the following remedies shall be granted as relief for
31 noncompliance:

32 (1) Failure to comply with any of the requirements of this section
33 shall be considered by the court in adjudicating motions to suppress
34 a statement of a defendant made during or after a custodial
35 interrogation.

36 (2) Failure to comply with any of the requirements of this section
37 shall be admissible in support of claims that a defendant's statement
38 was involuntary or is unreliable, provided the evidence is otherwise
39 admissible.

1 ~~(3) If the court admits into evidence a statement made during a~~
2 ~~custodial interrogation that was not electronically recorded in~~
3 ~~compliance with this section, the court, upon request of the~~
4 ~~defendant, shall give to the jury cautionary instructions. The~~
5 ~~Judicial Council shall develop jury instructions that are~~
6 ~~substantially similar to the following jury instruction:~~

7 —

8 ~~“The law requires the electronic video recording of interrogations~~
9 ~~by law enforcement officers when a defendant is charged with the~~
10 ~~offense listed in paragraph (1) of subdivision (b) of Section 707~~
11 ~~of the Welfare and Institutions Code. This is done to ensure that~~
12 ~~you will have before you a complete picture of the circumstances~~
13 ~~under which an alleged statement of a defendant was made in a~~
14 ~~custodial setting so that you may determine whether a statement~~
15 ~~was, in fact, made in that custodial setting and accurately recorded.~~
16 ~~If there is a failure to electronically record an interrogation, you~~
17 ~~have not been provided with a complete picture of all the facts~~
18 ~~surrounding the defendant’s alleged statement and the precise~~
19 ~~details of that statement. By way of example, you cannot hear the~~
20 ~~tone or inflection of the defendant’s and interrogator’s voice, or~~
21 ~~hear first hand the interrogation, both questions and responses, in~~
22 ~~its entirety. Instead you have been presented with a summary based~~
23 ~~upon the recollections of law enforcement personnel. Therefore,~~
24 ~~you should weigh the evidence of the defendant’s alleged statement~~
25 ~~made in a custodial setting with great caution and care as you~~
26 ~~determine whether the statement was, in fact, made in that custodial~~
27 ~~setting, and, if so, whether it was accurately reported by the state’s~~
28 ~~witnesses, and what, if any, weight it should be given in your~~
29 ~~deliberations.~~

30 ~~You have heard evidence that the defendant made a statement~~
31 ~~to a law enforcement officer in a custodial setting and that the~~
32 ~~statement was not recorded. You are the exclusive judge as to~~
33 ~~whether the defendant made the statement in that custodial setting,~~
34 ~~and as to what was actually said.~~

35 ~~You must first decide whether the defendant, in fact, made that~~
36 ~~statement in a custodial setting, in whole or in part. Among the~~
37 ~~factors you may consider in deciding whether the defendant~~
38 ~~actually made the alleged statement in a custodial setting is the~~
39 ~~failure of law enforcement officials to make an electronic recording~~
40 ~~of the interrogation conducted and the alleged statement itself. The~~

1 fact that a law enforcement officer did not comply with the law
2 requiring the electronic recording of the reported statement shall
3 be considered by you as a circumstance tending to show that the
4 statement was not made in that custodial setting.

5 If you find that the defendant did make the statement in that
6 custodial setting, you must view the statement, as reported, with
7 caution, because unrecorded oral statements made by a defendant
8 out of court to a law enforcement officer should be viewed with
9 caution. The failure of the law enforcement officer to comply with
10 the law requiring recording of the reported statement shall also be
11 considered by you as a circumstance bearing on the weight and
12 credibility to be given to the officer's account of the statement.

13 The presence of an electronic recording that is recorded in its
14 entirety permits, but does not compel you to conclude that the
15 prosecution has proven that a statement was, in fact, given and
16 that the electronically recorded statement was accurately reported
17 by the prosecution's witnesses."

18 —
19 (3) *If the court finds that a defendant was subject to a custodial*
20 *interrogation in violation of subdivision (a), the court shall provide*
21 *the jury with an instruction, to be developed by the Judicial*
22 *Council, that advises the jury to view with caution the statements*
23 *made in that custodial interrogation.*

24 (f) The interrogating entity shall maintain the original or an
25 exact copy of an electronic recording made of a custodial
26 interrogation until a conviction for any offense relating to the
27 interrogation is final and all direct and habeas corpus appeals are
28 exhausted or the prosecution for that offense is barred by law or,
29 in a juvenile court proceeding, as otherwise provided in subdivision
30 (b) of Section 626.8 of the Welfare and Institutions Code. The
31 interrogating entity may make one or more true, accurate, and
32 complete copies of the electronic recording in a different format.

33 (g) For the purposes of this section, the following terms have
34 the following meanings:

35 (1) "Custodial interrogation" means any interrogation in a fixed
36 place of detention involving a law enforcement officer's
37 questioning that is reasonably likely to elicit incriminating
38 responses, and in which a reasonable person in the subject's
39 position would consider himself or herself to be in custody,
40 beginning when a person should have been advised of his or her

1 constitutional rights, including the right to remain silent, the right
2 to have counsel present during any interrogation, and the right to
3 have counsel appointed if the person is unable to afford counsel,
4 and ending when the questioning has completely finished.

5 (2) “Electronic recording” means a video recording that
6 accurately records a custodial interrogation.

7 (3) “Fixed place of detention” means a fixed location under the
8 control of a law enforcement agency where an individual is held
9 in detention in connection with a criminal offense that has been,
10 or may be, filed against that person, including a jail, police or
11 sheriff’s station, holding cell, correctional or detention facility,
12 juvenile hall, or a facility of the Division of Juvenile Facilities.

13 (4) “Law enforcement officer” means a person employed by a
14 law enforcement agency whose duties include enforcing criminal
15 laws or investigating criminal activity, or any other person who is
16 acting at the request or direction of that person.

17 SEC. 3. Section 626.8 is added to the Welfare and Institutions
18 Code, to read:

19 626.8. (a) Subdivisions (a) to (d), inclusive, paragraphs (1)
20 and (2) of subdivision (e) and subdivision (g) of Section 859.5 of
21 the Penal Code shall apply to any custodial interrogation of a
22 person who is or who may be adjudged a ward of the juvenile court
23 pursuant to Section 602 related to ~~the offense described murder;~~
24 *as listed* in paragraph (1) of subdivision (b) of Section 707.

25 (b) (1) Except as otherwise provided in paragraph (2), Article
26 22 (commencing with Section 825) shall apply to any electronic
27 recording or other record made pursuant to this section.

28 (2) The interrogating entity shall maintain an original or exact
29 copy of any electronic recording made of a custodial interrogation
30 until the person is no longer subject to the jurisdiction of the
31 juvenile court, unless the person is transferred to a court of criminal
32 jurisdiction. If the person is transferred to a court of criminal
33 jurisdiction, subdivision (f) of Section 859.5 of the Penal Code
34 shall apply. The interrogating entity may make one or more true,
35 accurate, and complete copies of the electronic recording in a
36 different format.

37 SEC. 4. If the Commission on State Mandates determines that
38 this act contains costs mandated by the state, reimbursement to
39 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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